The Report of the Task Force on Legal Aid

89-05692/

May 18, 1988

The Honourable James D. Horsman, Q.C.,
Attorney General and Minister of
Federal and Intergovernmental Affairs,
320 Legislature Building,
EDMONTON, Alberta
T5K 2E8

Mr. A.D. Hunter, Q.C.,
President,
Law Society of Alberta,
1400 Western Canadian Place,
700 - 9th Avenue, S.W.,
CALGARY, Alberta
T2P 3V4

Dear Sirs:

Re: The Report of the Task Force on Legal Aid

The Task Force on Legal Aid has completed a study of legal aid services in the Province of Alberta. Included in this study is a review of the programs and services, the ordering of priorities, the manner of program delivery, and the relationship of the various partners involved in legal aid delivery.

Enclosed is a summary report of the Task Force conclusions and recommendations derived from submissions from the public, the legal profession, and interested agencies.

The Task Force is confident that the recommendations contained in this report will assist the Legal Aid Society in meeting the present and future legal aid needs in Alberta.

David J. Tilley, Q.C.

W. Vaughan Hembroff, Q.C.

Peter J. Royal, Q.C.

R. Bryan Waller, Q.C.

Dennis P. Medwid

M. Neil McCrank
(Chairman)

Executive Summary

The Task Force, established by the Attorney General's Department, the Legal Aid Society of Alberta and the Law Society of Alberta, independently reviewed the Legal Aid program in Alberta and invited submissions from the general public. Several recommendations are made in the areas of eligibility, program coverage, mode of delivery, financial arrangements, relationship of the founding partners and legislation.

The Task Force recommends that eligibility remain based on financial criteria and the consequences of non-coverage to the applicant. It is the view of the Task Force that the present guidelines as set out in the Legal Aid Rules are for the most part adequate; however, greater latitude in acceptance of cases should be exercised.

It is the view of the Task Force that civil coverage has generally been too restrictive. Civil coverage should become a priority and should include coverage before administrative tribunals, drop-in advice, and the implementation of civil duty counsel where warranted. In addition, the Task Force recognizes that the "compelling need" criteria for domestic matters are too restrictive in application.

With respect to criminal coverage, the Task Force found it to be adequate, but suggests that coverage be extended to administrative tribunals such as parole board hearings where the liberty of the applicant is in question.

Historically, Legal Aid has employed a "judicare model" of service delivery that employs private lawyers on a fee for service basis. The Task Force concluded that judicare should remain the primary means of program delivery, but suggests the Society consider employing staff lawyers to supplement services where the judicare method is inappropriate. In addition, it should allow applicants to employ counsel of their choosing and should encourage other measures to enhance program efficiency where deemed appropriate by the Board.

The Task Force acknowledges that Legal Aid has evolved to become a fundamental social program and should be totally supported by the government. Funding for Legal Aid should be structured on a basis that allows an annual review by the Legislature of Alberta. The Society should continue to implement strategies to ensure program effectiveness.

A review of the arrangements between the founding partners led the Task Force to recommend that the Legal Aid program be established by legislation in the Province of Alberta. The legislation should acknowledge the independence of the Legal Aid Society and enlarge the scope of public participation in the program. The statutory enactment should provide for considerable flexibility of the Society, keeping in mind the need for public accountability.

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CHAPTER 1

The Task Force Terms of Reference and Approach

This report was commissioned by the Law Society of Alberta, the Legal Aid Society of Alberta and the Alberta Attorney General's Department to examine legal aid services in Alberta. Included in this report is an examination of the Legal Aid programs and services, the ordering of priorities, the manner of service delivery, and the relationship of the various partners. The Task Force was established to undertake this review as a constructive attempt to ensure that the Legal Aid Society continues to service Albertans in the best way possible.

Since the founding of the Society in 1973, the economic, demographic and social face of Alberta has changed dramatically, perhaps more so than any other jurisdiction in Canada. In response to this, the legal environment has also vastly changed; the introduction of the *Young Offenders Act,* the *Child Welfare Act,* the *Maintenance Enforcement Act,* and most importantly, the *Charter of Rights and Freedoms,* has profoundly altered the legal context within which the Legal Aid Society operates.

The fundamental focus of inquiry of the Task Force was the extent to which the Legal Aid program can best meet the needs of the present and the challenges of the future. The Task Force had to question whether the program can continue to be based on the narrow professional responsibilities of the Law Society to provide legal services to less fortunate individuals, or whether it should be restructured as a social program directly responsible to the provincial government. In the pages that follow, it will be suggested that a fundamental reorganization of the structure and priorities of the Society are appropriate and desirable.

In adopting this approach, the Task Force is cognizant that the Legal Aid Society must be sensitive to social change, but not an engine of it. The Society must respond with innovative programs that address the needs of the public rather than create demands for services that are not presently offered.

The Task Force attempted to deal with the fundamental issues facing the Society and to make recommendations that could be pragmatically implemented. In doing this, the Task Force was acutely aware that the needs of Alberta society, the constraints facing governments and the concerns of the legal professional must be balanced and accommodated in order to provide a basis for the equitable provision of Legal Aid services in Alberta.

It is important to note that the Task Force restricted itself to broad questions of policy rather than the day-to-day administration of the program. After close review of the operations of the Society, the Task Force concluded that the administrative functioning of the Society is sound, and the Task Force is confident that it will continue to be effective. The Task Force therefore focused upon the broader questions of the role of the Society, leaving questions of implementation of any approved recommendations to the administrators.

The members of the Task Force were appointed by the major partners involved in legal aid delivery in the Province of Alberta: Mr. Neil McCrank (Chairman) and Mr. Dennis Medwid by the Attorney General; Mr. Bryan Waller, Q.C. and Mr. Peter Royal, Q.C. by the Law Society of Alberta; and Mr. Vaughan Hembroff, Q.C. and Mr. David Tilley, Q.C. by the Board of Directors of the Legal Aid Society. Ms. Nancy Nichols, Executive Director of the Legal Aid Society, actively participated in all discussions, particularly with reference to the administrative implications of the Task Force recommendations.

Submissions were received in response to advertisements which appeared in newspapers throughout the province, inviting the public to express their concerns on any aspect of the Legal Aid program. Over 60 written submissions directed to the Task Force attested to the public interest in the program. The Task Force is impressed with the substantive and wide-ranging views of Legal Aid and commends the citizens of Alberta for their efforts in articulating their concerns. Those submissions with recommendations that were ultimately rejected by the Task Force were particularly useful in that they served to focus discussion and ensure that all alternatives were duly considered.

As well as the submissions, the Task Force reviewed a great deal of material in their examination and discussion of the issues. Ten meetings were held between September, 1987 and May, 1988. In addition, each Task Force member contributed the resources of his personal staff to assist in distilling the large volume of information into the relatively manageable proportions of this report.

Finally, the Task Force wishes to emphasize that this report represents an independent assessment of Legal Aid in the Province of Alberta by the members of the Task Force and does not necessarily reflect the positions of the supporting agencies.

CHAPTER 2

History

Legal Aid in Alberta was officially established on July 1, 1970 by an agreement between the Law Society of Alberta and the provincial Attorney General. Prior to that, Judges appointed counsel for those accused of indictable offences. These lawyers were paid by the Attorney General. In civil matters, the "needy litigants" section of the Consolidated Rules of the Supreme Court of Alberta provided for filing and court reporters' fees to be absorbed by the Attorney General. Lawyers provided their services without charge unless recovery was made. In that case, a local Needy Litigants Committee might authorize and specify the remuneration that the lawyer would receive.

In 1963, a Committee of representatives of the Law Society and the Attorney General drew up a Memorandum of Agreement respecting criminal legal aid, and soon after the Committee was authorized to operate a pilot project in Edmonton for the provision of legal aid in criminal matters.

In civil matters, the Needy Litigants Plan continued until 1967. At that time, it became apparent that a plan which depended on the voluntary services of private lawyers was no longer appropriate. Interestingly, the problems cited in 1967 still exist today to some extent. In 1970, Judge Lieberman (as he then was), in the first report of the Joint Committee (the predecessor of the Board of Directors), cited the following issues:

(1) The scope of the plan was not sufficiently well delineated.

(2) The policies adopted by the Regional Committees varied greatly.

(3) The Committees were unable to deal adequately with the increased volume of applications caused by the increase in population and by a growing tendency to resort to litigation, especially in domestic matters.

(4) The Needy Litigants Plan by its name alone, and in addition by its operation as a charity, was repugnant in the light of today's sociological climate.

(5) The experience of welfare organizations is that services performed by professionals on a voluntary basis are not as satisfactory as those for which remuneration is provided.

(6) Finally, the Law Society recognized that in order to maintain the high standard and independence of the profession it was necessary to have any system of Legal Aid, criminal or civil, administered by the profession itself.

In the late 1980s, many of the above concerns remain unresolved. It is fair to say that all of them, albeit to differing degrees, required examination by the Task Force.

Legal Aid underwent the normal growth phases of any organization. In November, 1971, rules for determining coverage and governing operations were drafted, but not formally implemented for several years. By-laws were drafted in April, 1973, and in May that same year, Legal Aid was incorporated as the Legal Aid Society of Alberta.

In 1974, the Agreement between the Attorney General and the Law Society, first signed on July 1, 1970, was amended. It was signed in its present form in 1979. A few months later, the present Agreement between the Law Society and the Legal Aid Society was signed, whereby the former delegated to the latter the operation of the plan.

The first Federal/Provincial Cost Sharing Agreement was signed in 1977 and, with modifications, is still in effect. By virtue of this agreement the federal government reimburses the provinces in part for monies expended on criminal legal aid.

CHAPTER 3

Eligibility

Central to the system of Legal Aid is the question of who should benefit from the program, and how they should be identified. It is fair to say that the issue of eligibility is fundamental to the Society and also the source of much controversy. Inevitably, a program that seeks to serve an arbitrarily defined group will find unsatisfied potential clients outside the range of coverage.

The Task Force addressed the general question of eligibility and found that applicants are screened on the basis of two, and in some cases, three criteria: financial circumstances; consequences of non-coverage; and in certain situations, merit of the case. Following is a review of how these factors are assessed in each case before the Society, and associated recommendations:

Financial Eligibility

Eligibility for legal aid services, with the exception of those provided by duty counsel, is based upon both the financial circumstances and the type of legal problem faced by the applicant. Financial eligibility is determined by reference to guidelines which provide a sliding scale based on gross family income and size. As well as providing basic information such as gross monthly income, the applicant is required to answer questions about income during the last year, assets, liabilities and other information related to the question of his or her ability to retain counsel privately without undue financial hardship. The Task Force is of the view that financial status must remain the primary basis for determining which applicants can avail themselves of the program; however, exceptions to the guidelines must continue to be entertained where appropriate.

Recommendation:

1. **The applicant's financial position, based on family income, should remain a main factor in determining eligibility to legal aid programs, and staff should continue to exercise discretion in cases of hardship.**

Consequences to the Applicant

Coverage is automatically available to all financially eligible applicants who face indictable criminal charges. This is so because of the seriousness of the consequences — an applicant's liberty is at stake. Coverage is also automatically available to all eligible individuals charged pursuant to the federal *Young Offenders Act*, again because of the seriousness of the consequences.

In criminal summary conviction cases, coverage is not automatic and requires consideration of the applicant's circumstances. The consequences to the applicant are still the determining test. The Rules specifying the reasons for approval of legal aid include: the jeopardy of incarceration; the loss of means of earning a livelihood upon conviction; or other special circumstances that warrant the provision of legal aid. There was a consensus that the present coverage of criminal matters is generally adequate.

The civil coverage Rules do not expressly state that the consequences to the applicant should be the final determinant. An inference can be drawn from such rules as refusing coverage where there is a reasonable likelihood of settlement, or for divorce coverage unless there is "compelling need". The Task Force suggests that consequences to the applicant should be the test applied in decisions of approving or refusing coverage in civil matters, once financial eligibility is established. There may be a further requirement of merit, discussed below, but consequences should be examined.

Recommendation:

2. **The consequences to the applicant should be one of the eligibility criteria used by the Society. This should be based upon whether or not the applicant's liberty, safety, health, or livelihood are at stake.**

Merit

The Rules respecting civil coverage are clear in requiring that a matter have merit, or likelihood of success, or both, for legal aid to be granted. Further, the Rules set out the question, "would a reasonable person of modest means commence or defend the action?". The Task Force agreed that one test for civil eligibility should continue to be whether a reasonable person of modest means would undertake the legal action applied for. However, the Task Force recognized that this test may not always be appropriate. In some cases, the very reason for applying for legal aid is the applicant's financial plight and his need to benefit from a law designed to mitigate that plight. There must be enough flexibility in the program for staff to consider coverage of such cases.

Recommendations:

3. **Eligibility for civil coverage should also be based on the "reasonable person of modest means" test where appropriate. Exceptional circumstances may, however, require flexibility in complying with the guidelines.**

4. **The Society should continue to use merit as a test of eligibility in civil cases.**

CHAPTER 4

Programs and Services

One of the major items of the terms of reference of the Task Force was an examination of legal aid programs and services. The Task Force felt that the Society should examine its programs and objectives, including whether they should be expanded to include such services as legal education and drop-in advice. Accordingly, this Chapter represents the opinion of the Task Force on the broad questions of what legal aid services should be provided and to whom they should be available.

In examining the Legal Aid Society's mandate, the Task Force considered the many public submissions, examined the Society's constitutional documents, and reviewed the services now being offered. The latter was facilitated by the previous work of a Board of Directors Committee, which met with the Society's administrators for several months and catalogued all existing coverage and policies. The major constitutional document examined was the Legal Aid Society Rules, which were approved by the Law Society and the Attorney General on the 31st of May, 1979. These Rules set out the basis for legal aid coverage.

CRIMINAL COVERAGE

General

The Task Force noted that criminal coverage now comprises close to 80% of all certificates issued. There was consensus that in most criminal matters, coverage is generally adequate, and that staff should continue to use discretion in special circumstances. It should be mentioned that two submissions were received from groups that supported the extension of Legal Aid coverage to cases where there was no likelihood of imprisonment. This suggestion is contrary to present Board policy. The Task Force appreciated the intent of this suggestion, but noted that Duty Counsel is presently available to all individuals facing minor charges. Full coverage of these cases would seriously compromise the ability of the Society to introduce new programs for civil matters.

Recommendation:

5. Legal Aid should be available as a right only for matters where an applicant's liberty is concerned. For example, coverage should be available for parole revocation applications ("gating") and for some institutional matters. It should not extend to cases involving only internal discipline and loss of privileges.

Young Offenders Coverage

The Legal Aid Rules provide for universal coverage for financially eligible applicants charged pursuant to the federal *Young Offenders Act*. (The Rules actually still mention the *Juvenile Delinquent Act*, but the Board's proposed revisions of the Rules were held in abeyance pending any changes which may result from the report of the Task Force.) As a matter of Board policy, staff have the discretion to approve or refuse an application for provincial *Young Offenders Act* changes depending on the circumstances. In addition,

the Society administers the court ordered counsel program on behalf of the Attorney General's Department for counsel ordered by the Youth Court Judge, where the income of the young person's parents exceeds the Legal Aid guidelines. A problem exists in this area because court ordered counsel lawyers are paid at a higher rate than those on Legal Aid certificates.

Another major concern is in the area of conviction and/or sentence appeal applications for youths. The Rules require that an appeal have merit for coverage to be granted, and no distinction in this regard is made between adults and young persons. The Alberta Court of Appeal is strongly of the view that youths should not appear before the court without counsel and request that the Legal Aid Society ensure that counsel be appointed in all cases. Presently, an arrangement exists whereby those applications with merit are granted legal aid and those without merit are deemed to be court ordered counsel cases. This works reasonably well, but again there is an anomaly since a lawyer who is handling a case without merit is paid more than the one who is handling a meritorious appeal.

Recommendation:

6. **The Legal Aid Society should discontinue the administration of the court ordered counsel program for the Attorney General. Although this program is not a Legal Aid service, it is too easily confused with Legal Aid by clients, lawyers and judges. Furthermore, because lawyers are paid at different rates, there is an appearance of unfairness since youths who are not eligible for Legal Aid get lawyers who are paid more than those on Legal Aid.**

Criminal Duty Counsel

Duty counsel services are provided in 45 locations throughout the province. This includes an expansion within the last year of approximately 20 locations. Lawyers are paid on an hourly basis to attend at lock-ups prior to court and docket court for both adults and youths. Anyone may use the service; the financial eligibility guidelines do not apply.

Recommendation:

7. **The Task Force regards the present duty counsel service as useful and it should be expanded where necessary. No financial eligibility tests should apply to those individuals who use the service.**

Civil Coverage

General

The Task Force received submissions regarding legal aid for such areas as testamentary matters, *Public Health Act* appeals, civil rights, arbitration, test cases to the Supreme Court of Canada, and incorporation of non-profit organizations.

Recommendation:

8. **Although coverage in such areas as testamentary matters, *Public Health Act* appeals, civil rights, arbitration, and incorporation of non-profit organizations should not follow as a matter of right, it is recommended that the Society have the flexibility to grant coverage in such cases based on individual merit.**

Family Law Matters

Legal aid coverage for domestic matters comprises about 75% of all civil coverage, which itself is only 20 to 25% of all certificates issued. Most of the domestic coverage is for divorce where the Rules require that an applicant must show that there is "compelling need" for coverage (such as physical cruelty or a need to legitimize children) in order to initiate a divorce action. On the other hand, to obtain coverage for a respondent divorce, an applicant

need only indicate that he or she wishes to contest custody, grounds or maintenance. There is some criticism that it is much easier to obtain legal aid to defend a divorce action than it is to initiate one. Further, because of the requirement of compelling need, coverage is often not granted for initiating divorce, but rather for custody or access. Although the applicant requires an order for custody, for example, a divorce petition is often the vehicle used by the lawyer to get the matter before the court.

The Task Force received many submissions arguing that there should not be a requirement of compelling need for divorce coverage to be granted and citing examples where coverage should be extended. (It was clear to the Task Force that much of the problem in this area was a lack of public knowledge about the Society's policies. This issue is further discussed in the section on Public Legal Education and Information.)

Recommendation:

9. The Task Force recommends that the Society be encouraged to expand the present divorce coverage on a discretionary basis and review the appropriateness of the "compelling need" test.

Administrative Tribunals

Although the Rules are broad enough to permit coverage for hearings before administrative tribunals, staff have had difficulty in applying Board policy decisions to matters that arise infrequently. At present, applications are sometimes granted for Workers' Compensation Board matters and some immigration hearings, but rarely for parole board hearings. These latter matters have been handled by the Board on a case-by-case basis.

Recommendation:

10. In the area of administrative tribunals, it is recommended that Legal Aid should continue to be available where the circumstances to the applicant warrant the provision of legal assistance. Flexibility must remain in the Rules so that the staff may use discretion to approve coverage for tribunals where warranted.

Civil Duty Counsel

There is no duty counsel for any civil matter, although it was offered as a pilot project in Family and Youth Court some years ago. A number of possible areas where service could be provided by duty counsel includes drop-in advice for civil matters in general, divorce, and immigration law.

Recommendation:

11. The Task Force recommends that the Society be given the authority to initiate pilot projects to expand duty counsel for civil matters where warranted.

Other Issues

Repeat Offenders

The Task Force addressed the issue of whether recidivism should be a reason to refuse coverage for a subsequent offence which had been previously covered. The Legal Aid Rules give the Board the power to define circumstances under which an applicant may be refused legal aid and list as one of the reasons the fact that the applicant is facing a charge that is the same as or similar to one of which he has previously been convicted. The Task Force has been advised that the Board has never used this authority in such circumstances.

Recommendation:

12. The Task Force recommends that the Board not refuse legal aid on the basis of recidivism.

Native Matters

The Task Force received a submission pointing out the need to extend services in isolated areas where the majority of legal aid recipients are Native people. It was also suggested that Regional Legal Aid Committees include Native representatives and that Legal Aid staff receive Native awareness training. The submission did not propose that any programs be directed specifically at Native people but did suggest the employment of staff lawyers in isolated areas.

Recommendation:

13. The Task Force recommends that Legal Aid services should be expanded in isolated areas where many of the legal aid recipients are Native people. The Society should encourage representation by Natives on Regional Legal Aid Committees and Legal Aid staff should receive Native awareness training.

Charter Arguments

Presently, coverage for Charter arguments (either Charter rights or challenges to legislation) is available only when they comprise part of a criminal defense. Since there are some alternative sources of funding available for challenges based on the Charter, and since the Task Force does not see Legal Aid as an agency of social change, coverage in this area should not be expanded.

Recommendation:

14. The Task Force recommends that Charter arguments be covered only where they are an integral part of a service provided to a client. It is not recommended that the Society pursue Charter issues for the sake of defining the law.

Public Legal Education and Information

The Legal Aid Rules make no mention of a responsibility for public legal education, unlike the Legal Aid statutes of some of the other provinces. Furthermore, the Alberta Law Society and the Attorney General have in the past decided that Legal Aid should not be involved in providing public legal education. The Task Force recognizes that there are other agencies that provide this service.

The Task Force notes there is a distinction, however, between public legal education in a general sense and public service announcements related to legal aid services in particular. While Legal Aid should not be involved in the former, it should be doing more in the latter area.

From submissions received, it is clear that there is a need to provide better information about legal aid availability. Many submissions suggest improvements in communication with agencies that have the same clientele as Legal Aid, and several submissions indicated a lack of awareness about Legal Aid policies and services.

Recommendations:

15. It is recommended that the Society provide more and better information about the services it offers; however, the general area of public legal education should remain outside the mandate of the Society.

16. It is recommended that the administration take steps immediately to establish contact with appropriate agencies whose clients require Legal Aid services.

Advice

Many people call the Legal Aid offices seeking legal advice or information. Often, these callers are not involved in formal proceedings but may be contemplating the initiation of an action or worrying that an action might be brought against them. These callers are presently referred to other agencies, such as Student Legal Services or the Lawyer Referral Service. These summary services could be offered by an expansion of the duty counsel model into civil areas.

Recommendation:

17. It is recommended that the Board consider summary services, such as advice, be offered using the duty counsel model in civil areas.

Accessibility to Legal Aid

It was clear to the Task Force that accessibility for legal aid depends to a large extent on public awareness of available services. Many submissions argued that the Society needs to do more to make legal aid accessible to the public. This is particularly true in the rural and isolated areas.

Recommendation:

18. The Task Force recommends that the Society study the availability of legal aid services in rural and isolated areas, with the view of expanding duty counsel or hiring staff lawyers as a means to ensure that services are available to the public.

Poverty Law

"Poverty law" is an approach to the provision of legal aid services that has been suggested or alluded to in several submissions. The suggestion is based on the belief that socially disadvantaged groups require assistance in a whole range of legal services presently not covered by the Legal Aid program. This might include, for example, representation before administrative tribunals, the pursuit of class action suits in which low income individuals are affected, and advocacy by groups that could not otherwise afford the cost of doing so. It was the opinion of the Task Force that the provision of these services would constitute a program that would duplicate the services of several special interest groups and would at the same time be too narrowly focused when it came to the provision of legal aid services. That is, many individuals who are not strictly impoverished may require the use of the Society's services from time to time, and it would be regrettable if essential legal services to such individuals were sacrificed for breadth of coverage for a specific client group.

Recommendation:

19. It is recommended that the Legal Aid Society continue to be responsive to the needs of disadvantaged individuals, but this should be restricted to criminal and civil coverage. It is recommended that "poverty law" issues should be handled by staff lawyers where warranted.

CHAPTER 5

Mode of Delivery

For the Legal Aid Society to be effective, it is not only necessary that it provide appropriate services; it is also necessary that these services be delivered in a manner that is equitable and efficient. Although many of the issues discussed in this section are administrative in nature, the Task Force is of the view that it would be worthwhile to review a number of the Society's policies regarding program delivery.

As a general comment, the Task Force considers it a legitimate role of the Society to ensure the cost-effective delivery of services to clients. It is clear that in the present day context, the Society must continue to approach the issues of delivery and service with innovation in order to be cost effective in meeting the Society's objectives.

Legal Aid in Alberta was originally established to provide legal representation to needy applicants who were facing specific legal problems. Legal information or advice was not contemplated. With the exception of duty counsel, this model is still in use in that all services are delivered through certificate coverage by lawyers in private practice who are paid on a fee for service basis. This is referred to as the "judicare" system.

Cost Effectiveness

Given the ever increasing demand placed on the Society by the public need for Legal Aid services, it is essential that the Society adopt a manner of program delivery that is cost-effective, as well as appropriate for the Alberta context. The judicare model was adopted in the past because it was felt to be a flexible and cost-beneficial way of providing services. The Task Force feels that it is appropriate to review whether or not the judicare model is still appropriate for the present and future needs of the Society.

As a part of this review, the Task Force considered a recent report of the Canadian Bar Association. This report strongly endorses the use of a "mixed model" whereby the private bar and staff lawyers are used strategically within a jurisdiction to best meet the local needs of the public. The Task Force considered the applicability of the mixed model and concluded that, properly implemented, it would be appropriate for the Alberta context.

Recommendation:

20. The Task Force recommends that staff lawyers and the private bar be employed in a manner that most effectively ensures the delivery of Legal Aid services to the Alberta public.

Provincial Autonomy

Legal Aid is gaining recognition as a legitimate social program both on a provincial and a national basis. In Alberta, the Government of Canada funds somewhat less than half of the cost of adult criminal and young offenders legal aid. Because of the partial funding by the federal authorities in provincial legal aid programs, there has been a strong federal interest in ensuring that the delivery of legal aid programs is cost effective. The Task Force is aware of the federal initiatives in this area and shares the federal concerns that programs should be appropriately administered. However, it is

the view of the Task Force that the administration of legal aid programs must be done within the context of provincial needs rather than on the basis of a national agenda.

Recommendation:

21. It is recommended that the provincial Legal Aid Society continue to strive to provide cost-effective legal aid services in a manner that is most effective for the Alberta context.

Staff Lawyers

As stated above, Alberta's Legal Aid Society has employed lawyers from the private sector to provide legal services for clients. A number of submissions have suggested that staff lawyers could provide more effective services, particularly in areas where specialization is not readily available from the private bar, or in geographically isolated areas. The Task Force has reviewed this suggestion and is of the view that it merits consideration if it is administratively feasible.

Recommendations:

22. It is recommended that the Board of Directors consider employing staff lawyers where circumstances warrant, so that high quality legal services can continue to be provided to Alberta in a cost-effective way.

23. The Task Force recommends that, if the Board so chooses, pilot projects precede implementation of a staff lawyer component of service delivery.

Duty Counsel

Duty counsel services have been provided by the Society since 1975. It is the opinion of the Task Force that the provision of an on-site source of legal expertise in criminal matters has been a successful aspect of the Legal Aid program and that this function should be extended to the civil areas wherever appropriate.

Recommendation:

24. It is recommended that the Board consider how the duty counsel program can be further developed within the present framework of the Society and extended to cover civil matters. How this can best be done using staff lawyers and private counsel should be left to the Board to decide.

Choice of Counsel

Some time ago, the Roster Standards Committee recommended a modified form of choice of counsel with respect to what they called "special offences" (the more serious indictable matters) with the provision that if the legal aid applicant is not in a position to exercise a choice, a lawyer from a "senior counsel list" would be appointed on his behalf. There was to be a distinction between senior counsel and junior counsel, and it was only persons charged with special offences who would have the right to choose their lawyer from the senior counsel list. In the event that there had been a prior existing bona fide solicitor-client relationship between the applicant and a particular lawyer, the client could also have his choice of counsel, as long as junior counsel would not be appointed to take a special offence type of case. The Board of the Legal Aid Society was unable to adopt this program because of the additional cost that would be required.

At present, the Legal Aid Society provides a lawyer to legal aid clients from a rotating roster. A number of submissions suggested that the Society provide for choice of counsel where feasible. The Task Force is of the view that choice of counsel would significantly add to client satisfaction with legal aid services at little additional cost, and may also contribute to the improvement of professional standards. However, the Task Force understands that many clients may be unable to select a lawyer at large and it would be unfortunate if there were no alternative means of selection (such as the roster system) offered by the Society.

Recommendations:

25. It is recommended that the Legal Aid Society allow choice of counsel in all cases where geographically feasible.

26. A roster should be maintained for those clients who elect not to choose their own counsel.

27. The Society should implement any other recommendations made by the Roster Standards Committee Report where warranted.

Quality of Services

A number of submissions raised the issue of competence of lawyers appointed to Legal Aid cases and suggested different ways to ensure that reasonable standards are met. Some suggested that employing staff lawyers would develop expertise in different areas of the law. Others suggested that providing choice of counsel would ensure competence.

Recommendation:

28. The Task Force recommends that the Society consider innovative ways to continue to ensure the high standard of legal services, such as the employment of staff lawyers.

CHAPTER 6

Funding for Legal Aid

Federal/Provincial Government Cost Sharing

At present, the federal government provides slightly less than 50% of the funding for Adult Criminal Legal Aid and 50% of the funding for Young Offenders Legal Aid. The basis for this funding is a cost sharing agreement. It is the opinion of the Task Force that the approximate 50% contribution by the federal government is appropriate within the context of the Alberta Legal Aid plan.

The Task Force recognizes that the federal government has an interest in legal aid from a national perspective. However, it is the view of the Task Force that the responsibility for legal aid must remain within the domain of the Province so that the unique needs of Albertans can be most effectively addressed. The concept of national minimum standards may be unworkable because of the different economic and social contexts of each legal aid plan.

With respect to civil legal aid, the Task Force feels that financial contributions from the federal government should be solicited to support any future expansion of the program. It is the view of the Task Force that the federal government be approached to consider funding this program through the Department of Justice.

Recommendations:

29. The level of support from the federal government should not exceed 50% of the total expenditures for Adult Criminal Legal Aid and Young Offenders Legal Aid.

30. The federal government should be discouraged from direct involvement in setting provincial standards or from establishing federal control over the program.

31. Support for civil legal aid should be solicited from the federal government as a cost shared legal program.

Review of Services

The Task Force recognizes the need for ongoing review of Legal Aid programs and services to ensure that they meet the needs of the public. Part of this process is recognized in the Federal/Provincial Cost Sharing Agreement, which designates evaluation studies as a shareable expense, and acknowledges that cost-effectiveness of services is a concern of both levels of government.

The ongoing operational control of the Society includes regular Board meetings and an Annual General Meeting. Various monthly reports formulated by cost centre are produced, which provide an overview of the Society's expenditures. An Annual Report of the Society is produced which includes audited financial statements. An annual return including audited financial statements is filed with the Corporate Registry of Consumer and Corporate Affairs. Funding for the Society is provided by a Vote of the Alberta Legislature.

It is the opinion of the Task Force that these methods have been effective and will continue to be effective as a means of reporting and control.

Recommendations:

32. It is recommended that the Legal Aid program and services continue to be subjected to ongoing reviews.

33. Federal government initiatives to share responsibility for cost-effective delivery of services should be carefully reviewed for applicability to the Alberta context.

34. The Society should continue to act independently in the development of management systems.

35. Periodic reviews of the program should be conducted to ensure that Legal Aid program coverage continues to meet the needs of the public.

Budget Process

The level of public expenditure is determined by the Alberta Legislature. The request for funding of the Society is the result of a consultative process involving the Board, the Law Society and the Department of the Attorney General on an annual basis.

This method of funding requires continuous review of requirements, actual expenditures incurred, and forecasted expenditures based on the current level of activity and projections. Long range financial planning is difficult because of changing external factors such as legislation, types of cases covered, law enforcement practices, tariffs and the socio-economic description of the Alberta population.

Recommendations:

36. The Task Force recognizes there are many factors outside the Society's control that impact on program delivery. It is recommended that the consultative process continue with the agencies determining legal aid funding levels and priorities.

37. Relevant factors affecting long term financial planning must be identified by the Attorney General's Department to allow the Board to make reasonable funding projections.

38. Budget submissions by the Board should follow provincial government time frames to the extent practicable.

Establishment of Financial Eligibility Guidelines

The Legal Aid Society was established to make legal aid available to economically disadvantaged persons, thereby ensuring equality before the law. Establishing the criteria for who is economically disadvantaged is perhaps the most difficult process in the review of the legal aid program.

Poverty levels have been the main criteria used by the Society in formulating the financial eligibility guidelines. Factors outside the Society's control, such as mandatory coverage within cost sharing agreements and provincial or federal legislation, are operant in addition to the financial eligibility criteria. The Agreement which establishes the Society does not allow the Board of Directors to alter the eligibility guidelines without the consent of the Attorney General.

Recommendations:

39. The financial eligibility guidelines should be periodically reviewed by the Society to ensure that they reflect current economic conditions in Alberta.

40. It is recommended that the Board review the guidelines as part of its annual budget planning so that these can be discussed with the Attorney General along with other aspects of the budget submission each year.

User Fees

The Task Force reviewed the use of user fees either as a universal surcharge or for selected cases. The advantages of user fees would be to discourage frivolous cases and to provide a means to partially fund the program.

The disadvantages of user fees include the possibility that some worthwhile recipients of legal aid would be discouraged from applying.

Recommendation:

41. The Task Force is of the opinion that user fees should not be considered at this time, as the program is intended to provide legal services to economically disadvantaged persons. The implementation of user fees would therefore most discourage the individual that the program is attempting to assist.

Recovery of Fees

The Legal Aid Society recovers legal fees and disbursements whenever feasible. These recoveries are frequently complicated by the difficulty in tracking the individual who may subsequently be able to pay. Depending on an applicant's income, he or she may be required to contribute by way of monthly payments towards the cost of legal services provided. Nearly all applicants are required to sign an undertaking to repay the legal account and to sign a promissory note for the amount of the legal fees estimated in advance. The function of promissory notes is difficult to explain to clients and provides no real assistance in the collection of monies owing. Increased recoveries may be achievable with a more effective recovery system. Changes to the recovery system should be considered where cost-effective, as long as undue hardship for the client is avoided.

Recommendations:

42. The Board should maintain a billing policy and a related recovery policy to provide efficient administrative processes.

43. It is recommended that clients be billed by the Society in accordance with Board policy to ensure that the clients understand the nature and costs of the services provided.

44. The use of promissory notes should be discontinued.

Alternative Sources of Funding

Many legal aid plans receive funding from various outside sources, principally from the interest accruing to the lawyers' trust funds. The possibility that this funding could be directed towards the Legal Aid program was considered by the Task Force. It is the view of the Task Force that this is not an acceptable solution to the real need for legal aid services in Alberta. Because legal services for disadvantaged persons is an important social priority, it is felt that government funding must be direct and without compromise. In addition, the lower levels of tariffs accepted by the legal profession for their services in legal aid cases is a substantial private

contribution to the program, and directing interest payments from trust accounts would detach the government too much from the responsibility of providing support for those services.

Recommendation:

45. It is recommended that the provincial government continue to support the Legal Aid program in Alberta directly. Funding from sources such as lawyers' trust accounts should not be considered.

Contributions from the Legal Profession

Traditionally, the legal profession has accepted the responsibility of providing some of their time for services to the disadvantaged as a matter of professional obligation. With the advent of a more litigious society, it has been generally accepted that the burden of providing legal services will have to be supported to some degree by the government. In Alberta, lawyers taking on Legal Aid cases are understood to receive significantly less remuneration than they normally would in a private case as a means of maintaining the traditional professional contribution of legal services to the disadvantaged.

Recommendation:

46. In view of the continuing increase in demand for legal aid services, the Task Force recommends that the Law Society encourage its members to support the concept of equitable sharing of the responsibility to provide professional services to disadvantaged persons.

CHAPTER 7

Relationship of the Partners

Present Arrangements between the Partners

The statutory authority for the establishment of the legal aid plan is found in section 4 of the *Legal Profession Act* which is as follows:

> 4(1) Subject to the approval of the Lieutenant Governor in Council, the Attorney General and the Society may enter into an agreement respecting the operation by the Society of a plan to provide legal aid to persons in need of it in civil matters or criminal matters or both.

In section 7(2)(i) of the *Legal Profession Act* the Benchers of the Law Society have the authority to make rules providing for the establishment and operation of a Legal Aid program.

In addition to these statutory provisions in the *Legal Profession Act*, an Agreement between the Attorney General of Alberta and the Law Society dated the 13th day of February, 1979 permits the delegation to the Legal Aid Society of the obligation to operate a legal aid plan. The Agreement further provides for the funding of the plan by the Legislative Assembly, and requires the Law Society to submit a budget for the forthcoming year as well as a statement of the operation of the plan from the previous year. The Agreement also provides the Benchers of the Law Society with the right to make rules pursuant to section 7(2)(i) of the *Legal Profession Act*.

A further Agreement between the Law Society of Alberta and the Legal Aid Society of Alberta dated 31st of May, 1979 provides for the constitution and membership of the Legal Aid Board. The Legal Aid Society is an incorporated entity under the provisions of the *Societies Act* and has a full set of by-laws governing those matters usual to societies in general.

The Task Force notes that these arrangements were appropriate when they were made in that they met the needs of the public for the provision of legal aid services. However, the Task Force acknowledges that profound changes have occurred since these agreements were entered into. The fundamental nature of the provision of legal aid has changed from a system of assistance to needy persons by the law profession, to a broadly based social program which is now an integral part of our system of administering justice.

Recommendation:

47. The Task Force is of the view that the tripartite control of Legal Aid requires revision if the Society is to continue to meet the demands of the public in the Province of Alberta.

Autonomy of the Society

Although the Law Society expressly delegates to the Legal Aid Society the power to operate the Legal Aid program on its behalf, there are severe restrictions placed upon the Legal Aid Society by the Agreement of the 31st day of May, 1979. Specifically, section 2 of the Agreement provides that:

> (2) The Legal Aid Society shall not
>
> (a) make any request for funds, accept any funds, or in any way take initiatives in respect of financing from any source other than pursuant to paragraph 3;
>
> (b) initiate new legal aid programs or extend the delivery of existing legal aid programs; or
>
> (c) alter the method of providing legal aid under the legal aid plan;
>
> without the prior consent of the Law Society and the Attorney General of Alberta.
>
> (2.1) The Legal Aid Society shall not alter the existing tariff for lawyers providing services pursuant to a certificate without the prior written consent of the Law Society.

The Task Force views the present relationship between the Attorney General, the Law Society of Alberta and the Legal Aid Society of Alberta as a somewhat cumbersome arrangement. Specifically, the Task Force feels that the Legal Aid Society, controlled as it is on one hand by the fiscal considerations of the Attorney General, and on the other hand by the direct control of the Law Society through the Agreements, is no longer workable. The Task Force is of the view that in the past, the awkward nature of the decision-making process has prevented the necessary changes in the delivery of legal aid from being made in a timely fashion.

Moreover, the Task Force recognizes that the growth of the Legal Aid program and the involvement of the Board with the administration over the last decade has resulted in the development of the necessary perspective and expertise to enable the Society to function with a greater degree of autonomy. Legal Aid has evolved from a program dependent upon the sacrifice of individual lawyers, as a matter of professional obligation, to a major social program.

In the view of the Task Force, the position adopted by the National Executive of the Canadian Bar Association in its 1985 study of legal aid has merit, wherein it states that:

> "It is important that legal aid agencies are manifestly not the agents of government, the legal profession or any particular interest group.
>
> They must be independent of government because [they are] so often on the other side of legal aid cases, be they child welfare, administrative tribunal or criminal. The legal profession should not directly control legal aid because it can too easily be seen as self-interested in the level of tariffs and types of delivery models. Further, control by the legal profession invites the suggestion that legal aid is primarily a professional and charitable obligation and not an essential and therefore publicly funded service. Finally, care must be taken not to have the administration of legal aid dominated by any particular faction of the community. The needs and interests of legal aid recipients are varied and often conflicting. The administrative agency must be neutral in its provision of legal services to all who need them and give fair consideration to the rights of other parties.

However, government, the legal profession and the community all have vital concerns with respect to legal aid. It follows that legal aid should be administered by independent statutory bodies under the direction of Boards which reflect a balanced representation of the interests of government, the legal profession and the community."

Recommendation:

48. The Legal Aid Society of Alberta should be recognized, as soon as practicable, as the sole body responsible for the provision of legal aid in the Province of Alberta. The Society should have exclusive control over the program and be responsible for the development and management of policies relating to the provision of legal aid within the Province of Alberta.

Constitution of the Board of Directors

At present, the Board of Directors of the Legal Aid Society of Alberta consists of two appointees from the Law Society of Alberta, two appointees by the Attorney General of Alberta, a representative of the federal government, and a number of members-at-large appointed jointly by the representatives of the founding partners. The Task Force recognizes that the Law Society and the Attorney General are important partners in the provision of legal aid services. The Task Force is of the opinion that the interests of the Attorney General and the Law Society of Alberta can best be assured through representation on the Board of Directors of an independent Legal Aid Society.

Recommendations:

49. The Legal Aid Society's Board should be made up of an equal number of Law Society representatives, representatives of the Attorney General's Department and representatives of the public, in addition to one representative from the Department of Justice.

50. The representatives of the general public should be independent of both the Law Society and the Attorney General. These representatives should be selected by the Board as a whole from qualified candidates representing all sectors of the public.

51. The Legal Aid Society of Alberta should appoint its chairman on an annual basis from among the members of the Board. This chairman should be a member of the Law Society of Alberta. The appointment of such a chairman should not be subject to the approval of either the Law Society of Alberta or the Attorney General of Alberta.

CHAPTER 8

Legislation

It is significant to note that Alberta is the only province which does not have enabling legislation for the provision of legal aid. Every legal aid plan involves public funding from the two senior levels of government. Public funding carries with it the attendant requirement of public scrutiny.

Enactment of legislation would ensure more accountability to the public for funding provided by public sources. Legislation would also enshrine the principles of client privilege in statutory form, as well as formalize the basic rights available to legal aid applicants. Administratively, the autonomy of the Board would be strengthened with a statutory statement detailing the prerogatives and responsibility of Board members. Perhaps the most fundamental change to result from the enactment of legislation would be to open up the functioning of the Society to public scrutiny. Finally, the participation of the Legislative Assembly in dealing with changes to legislation and budget submissions would ensure greater public awareness about the plan, its aims, and how it is being run.

If legislation were to be contemplated, the question of the scope of legislation would have to be addressed, as it could have profound program impact. In other provinces, statutes vary from simple enabling legislation to very detailed comprehensive legislation, setting out types of coverage, and so forth. The Task Force is of the view than any contemplated legislation should provide the greatest degree of flexibility along with the necessary levels of public accountability. Therefore, the Task Force favors enabling legislation rather than a comprehensive Act.

Recommendation:

52. It is recommended that enactment of legislation be considered. If enacted, this legislation should provide for an autonomous Board in order to have the greatest flexibility in meeting the objectives of the Society.

Appendices

Alberta

ATTORNEY GENERAL

FEDERAL AND
INTERGOVERNMENTAL AFFAIRS

Office of the Minister

403/427-2339 • 427-2585
Room 320 Legislative Building
Edmonton, Alberta, Canada T5K 2B6

APPENDIX 1

June 18, 1987

John V. Decore, Q.C.,
President,
The Law Society of Alberta,
Decore & Company,
9636 - 102 A Avenue,
Edmonton, Alberta T5H 0G5

Dear Mr. Decore:

At the May 19, 1987, meeting between myself and the Law Society, it was decided that a committee would be struck to look at a number of aspects of the legal aid system in Alberta. It is my understanding that included in the review will be legal aid programs and services, ordering of priorities, manner of service delivery and the relationship of the Legal Aid Society, the Alberta Law Society and the Attorney General's Department. At that time, I agreed to designate someone to represent my Department on the committee.

This letter is to advise you that Mr. Dennis Medwid, Executive Director, Administration Division, and Mr. Neil McCrank, Assistant Deputy Minister, Criminal, will be the representatives for my Department.

I am confident that the committee will examine this important topic and provide us with useful recommendations to consider.

Yours truly,

James D. Horsman, Q.C.,
Attorney General

JDH:mf

ccs: Ms. Nancy Nichols,
Executive Director, Legal Aid Society

D.J. Tilley,
Chairman, Legal Aid Society of Alberta
2300 - 10025 Jasper Avenue, Edmonton

APPENDIX 2

List of Recommendations

1. The applicant's financial position, based on family income, should remain a main factor determining eligibility to legal aid programs, and staff should continue to exercise discretion in cases of hardship (Page 5).
2. The consequences to the applicant should be one of the eligibility criteria used by the Society. This should be based upon whether or not the applicant's liberty, safety, health, or livelihood are at stake (Page 6).
3. Eligibility for civil coverage should also be based on the "reasonable person of modest means" test where appropriate. Exceptional circumstances may, however, require flexibility in complying with the guidelines (Page 6).
4. The Society should continue to use merit as a test of eligibility in civil cases (Page 6).
5. Legal Aid should be available as a right only for matters where an applicant's liberty is concerned. For example, coverage should be available for parole revocation applications ("gating") and for some institutional matters. It should not extend to cases involving only internal discipline and loss of privileges (Page 7).
6. The Legal Aid Society should discontinue the administration of the court ordered counsel program for the Attorney General. Although this program is not a Legal Aid service, it is too easily confused with Legal Aid by clients, lawyers, and judges. Furthermore, because lawyers are paid at different rates, there is an appearance of unfairness since youths who are not eligible for Legal Aid get lawyers who are paid more than those on Legal Aid (Page 8).
7. The Task Force regards the present duty counsel service as useful and it should be expanded where necessary. No financial eligibility tests should apply to those individuals who use the service (Page 8).
8. Although coverage in such areas as testamentary matters, *Public Health Act* appeals, civil rights, arbitration and incorporation of non-profit organizations should not follow as a matter of right, it is recommended that the Society have the flexibility to grant coverage in such cases based on individual merit (Page 8).
9. The Task Force recommends that the Society be encouraged to expand the present divorce coverage on a discretionary basis and review the appropriateness of the "compelling need" test (Page 9).
10. In the area of administrative tribunals, it is recommended that Legal Aid should continue to be available where the circumstances to the applicant warrant the provision of legal assistance. Flexibility must remain in the Rules so that the staff may use discretion to approve coverage for tribunals where warranted (Page 9).
11. The Task Force recommends that the Society be given the authority to initiate pilot projects to expand duty counsel for civil matters where warranted (Page 9).
12. The Task Force recommends that the Board not refuse Legal Aid on the basis of recidivism (Page 9).
13. The Task Force recommends that Legal Aid services should be expanded in isolated areas where many of the legal aid recipients are Native people. The Society should encourage representation by Natives on Regional Legal Aid Committees and Legal Aid staff should receive Native awareness training (Page 10).
14. The Task Force recommends that Charter arguments be covered only where they are an integral part of a service provided to a client. It is not recommended that the Society pursue Charter issues for the sake of defining the law (Page 10).
15. It is recommended that the Society provide more and better information about the services it offers; however, the general area of public legal education should remain outside the mandate of the Society (Page 10).
16. It is recommended that the administration take steps immediately to establish contact with appropriate agencies whose clients require Legal Aid services (Page 10).
17. It is recommended that the Board consider summary services, such as advice, be offered using the Duty Counsel model in civil areas (Page 11).
18. The Task Force recommends that the Society study the availability of Legal Aid services in rural and isolated areas, with the view of expanding duty counsel or hiring staff lawyers as a means to ensure that services are available to the public (Page 11).

19. It is recommended that the Legal Aid Society continue to be responsive to the needs of disadvantaged individuals, but this should be restricted to traditional criminal and civil coverage. It is recommended that "poverty law" issues should be handled by staff lawyers where warranted (Page 11).

20. The Task Force recommends that staff lawyers and the private bar be employed in a manner that most effectively ensures the delivery of Legal Aid services to the Alberta public (Page 12).

21. It is recommended that the provincial Legal Aid Society continue to strive to provide cost-effective legal aid services in a manner that is most effective for the Alberta context (Page 13).

22. It is recommended that the Board of Directors consider employing staff lawyers where circumstances warrant, so that high quality legal services can continue to be provided to Alberta in a cost-effective way (Page 13).

23. The Task Force recommends that, if the Board so chooses, pilot projects precede implementation of a staff lawyer component of service delivery (Page 13).

24. It is recommended that the Board consider how the duty counsel program can be further developed within the present framework of the Society and extended to cover civil matters. How this can best be done using staff lawyers and private counsel should be left to the Board to decide (Page 13).

25. It is recommended that the Legal Aid Society allow choice of counsel in all cases where geographically feasible (Page 14).

26. A roster should be maintained for those clients who elect not to choose their own counsel (Page 14).

27. The Society should implement any other recommendations made by the Roster Standards Committee Report where warranted (Page 14).

28. The Task Force recommends that the Society consider innovative ways to continue to ensure the high standard of legal services, such as the employment of staff lawyers (Page 14).

29. The level of support from the federal government should not exceed 50% of the total expenditures for Adult Criminal Legal Aid and Young Offenders Legal Aid (Page 15).

30. The federal government should be discouraged from direct involvement in setting provincial standards or from establishing federal control over the program (Page 15).

31. Support for civil legal aid should be solicited from the federal government as a cost shared legal program (Page 15).

32. It is recommended that the Legal Aid program and services continue to be subject to ongoing reviews (Page 16).

33. Federal government initiatives to share responsibility for cost-effective delivery of services should be carefully reviewed for applicability to the Alberta context (Page 16).

34. The Society should continue to act independently in the development of management systems (Page 16).

35. Periodic reviews of the program should be conducted to ensure that Legal Aid program coverage continues to meet the needs of the public (Page 16).

36. The Task Force recognizes that there are many factors outside the Society's control that impact on program delivery. It is recommended that the consultative process continue with the agencies determining legal aid funding levels and priorities (Page 16).

37. Relevant factors affecting long term financial planning must be identified by the Attorney General's Department to allow the Board to make reasonable funding projections (Page 16).

38. Budget submissions by the Board should follow provincial government time frames to the extent practicable (Page 16).

39. The financial eligibility guidelines should be periodically reviewed by the Society to ensure that they reflect current economic conditions in Alberta (Page 17).

40. It is recommended that the Board review the guidelines as part of its annual budget planning so that these can be discussed with the Attorney General along with other aspects of the budget submission each year (Page 17).

41. The Task Force is of the opinion that user fees should not be considered at this time, as the program is intended to provide legal services to economically disadvantaged persons. The implementation of user fees would therefore most discourage the individual that the program is attempting to assist (Page 17).

42. The Board should maintain a billing policy and a related recovery policy to provide efficient administrative processes (Page 17).

43. It is recommended that clients be billed by the Society in accordance with Board policy to ensure that the clients understand the nature and costs of the services provided (Page 17).

44. The use of promissory notes should be discontinued (Page 17).

45. It is recommended that the provincial government continue to support the Legal Aid program in Alberta directly. Funding from sources such as lawyers' trust accounts should not be considered (Page 18).

46. In view of the continuing increase in demand for legal aid services, the Task Force recommends that the Law Society encourage its members to support the concept of equitable sharing of the responsibility to provide professional services to disadvantaged persons (Page 18).

47. The Task Force is of the view that the tripartite control of Legal Aid requires revision if the Society is to continue to meet the demands of the public in the Province of Alberta (Page 19).

48. The Legal Aid Society of Alberta should be recognized, as soon as practicable, as the sole body responsible for the provision of legal aid in the Province of Alberta. The Society should have exclusive control over the program and be responsible for the development and management of policies relating to the provision of legal aid within the Province of Alberta (Page 21).

49. The Legal Aid Society's Board should be made up of an equal number of Law Society representatives, representatives of the Attorney General's Department and representatives of the public, in addition to one representative from the Department of Justice (Page 21).

50. The representatives of the general public should be independent of both the Law Society and the Attorney General. These representatives should be selected by the Board as a whole from qualified candidates representing all sectors of the public (Page 21).

51. The Legal Aid Society of Alberta should appoint its chairman on an annual basis from among the members of the Board. This chairman shall be a member of the Law Society of Alberta. The appointment of such a chairman should not be subject to the approval of either the Law Society of Alberta or the Attorney General of Alberta (Page 21).

52. It is recommended that enactment of legislation be considered. If enacted, this legislation should provide for an autonomous Board in order to have the greatest flexibility in meeting the objectives of the Society (Page 22).

APPENDIX 3

List of Submissions

The following is a list of agencies and individuals who have given submissions to the Task Force:

AADAC
Alberta Council of Women's Shelter (#1) Provincial Office
Alberta Council of Women's Shelter (#2) Provincial Office
Alberta Human Rights & Civil Liberties Association
Alberta Human Rights Commission
Alberta Labour Relations Board
Alberta Social Services - Bernd Walter
Alberta Social Services & Community Health - Celeste Grad
Alberta Women's Institutes
Big Country Health Unit
Bissonnette, Elise
Blunden, Wilfred
Boyle Street Community Services Co-op
Cairns, Richard - Starr Cairns (#1)
Cairns, Richard - Starr Cairns (#2)
Calgary Defense Lawyers Association
Calgary Legal Guidance
Canadian Bar Association - Alberta Branch
Cavanaugh, Barry J.
Channer, Arthur
Criminal Trial Lawyers Association
Edmonton Social Planning Council
Edmonton Social Services
Edy, Brian A.F.
Elizabeth Fry Society
Family Violence and Immigrant Women Network Committee
Goodfellow, W. Donald, Q.C.
Graham, Carol Ann - Graham Hagel
Hackler, Jim - Department of Sociology, U. of A.
Hagel, Terry McGuire (Mrs.) - Graham Hagel
Higgins, Brian
Jensen, Bodil Jelhof
John Howard Society of Alberta
John Howard Society (Edmonton) - Client Services
Kitsco, V.A.
Lac La Biche Integrated Services
Leduc Family and Community Support Services
MacLeod, Don W. - O'Brien Devlin Markey MacLeod
Martinson & Company
Methot, Bernard J.
Mungan, Gunilla - Martinson & Company
Native Counselling Services of Alberta
Native Counselling Services - Slave Lake
O'Brien Devlin Markey MacLeod
Pearce, Dr. K.I. (#1)
Pearce, Dr. K.I. (#2)
Pickton, Clifford B. - Pickton & Bardsley
Pidruchney, William T., Q.C.
Prindle, Ken
Pundit, Gajanan - Pundit Chotalia
R.C.M.P. - "K" Division
Robinson, Claude Joseph
Rolf, C.H. - Assistant Chief Judge, Provincial Court
Rouleau, Irene
Rundle, K.
Stewart, Charles - Stewart McCullough
Stoney Tribal Administration
Student Legal Services of Edmonton
Szabo, Anita - Pickton & Bardsley
Takada, Mark - Pickton & Bardsley
Victims of Law Dilemma Society
Wellspring Women's Association
Whyte, Philip
Widema, John
Wings of Providence
Women's Residence Association, Grande Prairie - Odyssey House